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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1006

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

vs.

SUPREME COURT OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITIONER'S REPLY TO THE MEMORANDUM OF RESPONDENTS

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SUMMARY OF ARGUMENT

t is the respondents' contention that petitioner does not de-
e to be admitted to the practice of law; therefore, whether
constitutional rights were violated or not is irrelevant.

t is the petitioner's argument that his constitutional rights
e violated in his bar admission proceedings; therefore,
ether he should have been admitted or not is irrelevant for
purposes of review.

1. In Their Answer, Respondents Did Not Address Themselves to the Issues Presented by the Petition for Certiorari.

Petitioner argued in his petition that his constitutional rights had been seriously violated in two different areas: (1) he had been punished for exercising his First Amendment rights to comment on and criticize government officials; (2) he had been denied his procedural rights under the Fourteenth Amendment in the long series of hearings which led to his denial of admission to the bar. In no way did the response of the respondents address itself to these constitutional claims.

With respect to his denial of due process, petitioner concluded on the basis of the record before the Court that (a) he had been forced to undergo a second lengthy series of hearings when no grounds were found in a first series of hearings to deny him admission; the response does not contest this conclusion. Petitioner alleged that no findings beyond a reasonable doubt were made against him but, on the contrary, a vague and indefinable evidentiary standard had been applied against him; the response does not contest this allegation. Petitioner charged that he had been placed under a continuing and unshiftable burden of proof to disprove alleged charges against him; respondents do not attack this conclusion. Petitioner claimed vague and indefinite charges were placed against him which were impossible to answer, and these charges were amended after the close of the hearings when there was no opportunity to respond. Again, the respondents are silent on any challenge to this conclusion. Finally, petitioner alleged that different standards were applied to him, as an applicant for the bar, than would have been applied to him if he were an attorney being disciplined for improper conduct. The respondents could hardly contest this allegation because the opinion of the Court below clearly states: "Admission cases are not governed by the same rule as disciplinary cases against attorneys, *where definite charges are lodged.*" (Emphasis added.)

With respect to his denial of First Amendment rights, petitioner freely conceded having made a number of strong statements after several years of silence by petitioner and repeated provocations by respondents. Petitioner noted (i) these statements were protected by the First Amendment and (ii) they had, in any event, largely been made in private correspondence. Further petitioner concluded that to the extent respondents had provoked adverse commentary by forcing petitioner to undergo years of hearings without charges, the respondents could hardly base a denial of admission on their own provocative conduct. Respondents did not object to the conclusion that petitioner was punished for exercising his First Amendment right, because respondents concluded without proof or benefit of any evidentiary record that petitioner's conclusions were "unreasonable."

Respondents' response appears to proceed along the assumption that because respondents had concluded petitioner was in some manner a "bad man," and should be denied admission to practice his profession, they were under no requirement to protect petitioner's constitutional rights or to accord him fair hearings consistent with constitutional standards. Buttressing their conclusions, the respondents appear to openly mischaracterize their own prior positions, and to recast their prior decisions in a new light.

For example, respondents claim petitioner was denied admission because of "substantial evidence of psychiatric instability." This is simply untrue. Petitioner was never charged with being unstable; he was charged with refusing to undergo a psychiatric examination, which he had in fact agreed to undergo as the respondents then concede. Despite the fact respondents are thus contradicted on the bare record, they initiate in this Court a defense grounded on the "psychiatric instability" of the petitioner. More interesting, of course, is the fact that the Court below expressly refused to even address itself to this issue or in any way to decide it; the opinion is clear on that point.

Thus, rather than defend the constitutionality of the proceedings below, respondents apparently prefer to continue their attacks on the character of the petitioner. Although petitioner has never consulted a psychiatrist, he is thus accused of a psychiatric condition.[1] This Court can best decide for itself what weight it will devote to such responsive arguments.

2. It Would Be Inappropriate for Petitioner to Reopen the Record Before This Court by Responding to the New Accusations of Respondent.

The respondents are apparently either unaware of, or deliberately choose to ignore, the role played by this Court in our Constitutional system. The Supreme Court is not a trial court; it is not a Court which can or would sit in judgment on whether petitioner should be admitted to the bar or not. It sits to determine constitutional issues on the basis of the record below. On the mistaken or deliberate assumption that the case is still open, and that petitioner is still fair game for attacks by the respondents, the respondents thus largely ignore the constitutional issues presented in the petition and, amazingly, devote

1. The record below establishes that in 1970 petitioner's fiance was dying of brain illness, and soon thereafter died; that her mother and his mother were both hospitalized with serious illness; that petitioner was under severe strain because of months of bar admission hearings without any charges being made, and that he was drafted and told to abandon his business. Petitioner did consult a family friend, a *psychologist*, who attempted to help petitioner from being drafted and indeed, his fiance's mother also requested that he be allowed to remain behind with her dying daughter. The months of bar admission hearings were also a substantial strain, and at no time had *any* charges been made against petitioner. The psychologist later found that the bar case had been a substantial source of petitioner's anxiety during this period. Having thus served as a substantial source of the tension, respondents now seek to take advantage of their improper tactics by accusing the petitioner of "psychiatric instability" although he has never in his life himself consulted a psychiatrist. These types of tactics do not do honor to the respondents and, again, this Court can best judge for itself the weight which will be accorded such patent misrepresentations to this Court.

some seven (7) pages of their nine (9) page response to new accusations against the petitioner, none of which are in the record and some of which happened long after the decision of the Court below.

Indeed, it would not be unreasonable for this Court to view for itself the pattern which emerges in the response, and which has appeared at several prior points in the proceeding. Time and time again, when past action cannot be justified on the record, new accusations are proffered to support past decisions. When the Fourth District committee could find no basis to deny petitioner admission, the case was not closed; it was reopened in the First District. When the First District failed to make out a case against petitioner after a combined three year investigation, and was unable to call a single witness to testify against petitioner after this three year investigation, the First District amended the charges *after* the close of the hearings at a time when it was impossible to respond in any reasonable manner. Again, before this Court, the respondents ignore the record below and fail to find in it any justification for their past conduct in denying petitioner admission; instead, they look to future actions, some of which occurred after their decision, as support for the action they took. Thus, petitioner has constantly been forced to pursue, as he is again invited to do so by the respondents in this Court, a will'-o'-the-wisp argument and defense, a constantly shifting case against him, never closed, and always open to new attacks against petitioner. As a possibly unethical ploy, the tactic may nevertheless have some benefit for the respondents.

Petitioner is confronted with a Hobson's choice. If he wades into a defense of new attacks and arguments presented by the respondents and which are totally beyond the record before this Court, the petitioner risks becoming bogged down in a quagmire and seeking to use the very improper tactics of the respondents. If, on the other hand, petitioner ignores the new accusations and attacks, he risks allowing this Court to conclude there

may be some substantial foundation for the new attacks, which there is not. Petitioner can only trust to the good judgment of this Court and counter with the conclusion that those who are afraid to address the record and defend on the record, must have something to fear in the record. At all times petitioner has relied on the record in support of his claims, while respondents have studiously avoided the record and have relied on new accusations and new charges to justify their past actions.

Again, it should be evident that respondents fail to apprehend the role of this Court. The Court does not sit in judgment to referee a mudslinging match, conducted according to the bizarre rules of Illinois politics; it addresses itself to only substantial constitutional questions and issues. If, as petitioner points out from the record, petitioner was denied his professional admission in proceedings which violated constitutional standards of due process and which were used to punish him for the exercise of his constitutional rights, then there is substantial constitutional question presented worthy of further study by this Court.

The issue is not whether petitioner is a bad man or a good man, whether he should have been admitted to the bar *vel non*. The issue is solely whether his constitutional rights were violated and, if they were, that is a point to which this Court can and would likely want to address itself.

CONCLUSION

The record reflects that in his brief lifetime and during the period relevant to the proceedings below, petitioner had: been an honor student at the University of Illinois and graduated from the College of law; he had three times been to Viet-Nam as a combat correspondent and photographer (Senator Douglas assisted in sending him the first time); he had been a consumer advocate and real estate businessman and had served, in 1966, on the staff of then-Senator Paul Douglas. During over three years of investigation, conducted by a private detective agency,

Regional Investigators, Inc., respondents could not find a single witness to come forth and testify to the bad character of the petitioner. It was more likely out of desperation, than out of design, that unconstitutional proceedings were resorted to, to deny petitioner admission to the bar.

Petitioner is not a bad man, though he is probably unpopular in some quarters. Because of his successful opposition to utility rate increases, and because of his public interest litigation, some successful and some unsuccessful, petitioner has not been a favorite of the conservative rural bar in central Illinois.[2] It is not surprising that in a life characterized in parts by adventure, business success and public interest advocacy, petitioner would have made a number of influential enemies. But personal passions can never justify an abuse of authority or a denial of constitutional rights, a fortiori in seeking to deny a person a license to practice his profession.

Justice Black anticipated this type of case—they are infrequent and unusual situations but they do occur—when he observed:

> (I)t must be remembered that the right of a lawyer or bar applicant to practice law is often more valuable to him than his home, however expensive that home may be. Therefore, I think that when a state seeks to deny an applicant admission or to disbar a lawyer, it must proceed according to the most exacting demands of due process of

2. Long before the energy crisis was in vogue, Petitioner was appealing to the Federal Power Commission to develop a national energy policy and seeking to develop the interrelationships between regulatory agencies and monopoly power. Controversial matters of this type must inevitably lend one into strong conflicts, of the type inimical to "downstate" Illinois lawyers. Yet for every lawyer who has attacked him, petitioner has received hundreds of calls and letters of thanks from common citizens who admire his fearlessness, even at the price of his profession. Thus, it is not surprising that not one citizen would come forth to accuse petitioner of impropriety or to testify to his bad moral character.

> law. This must mean at least that the right of a lawyer or Bar applicant to practice cannot be left to the mercies of his prospective or present competitors.
>
> *Law Students Civil Rights Research Council* v. *Wadmond*, 401 U. S. 154, at 174 (Black, *J.* dissenting).

When needless injury and constitutional deprivation are inflicted on an innocent individual and when his livelihood is taken from him without due process of law on the basis of passion and prejudice and provocative abuse of official authority, it is not only the individual who suffers, it is society as well. When such unconscionable acts occur within the framework of the legal profession, it is not only the individual who is diminished, but every lawyer and judge to whom such conduct is inimical.

Petitioner prays that the petition be allowed and that the judgment of the Supreme Court of Illinois be reversed.

Respectfully submitted,

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SERVICE

I certify I have served a copy of this reply on counsel for respondent.